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No. 79-870

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES RAILROAD RETIREMENT BOARD,
Appellant,

v.

GERHARD H. FRITZ,
Appellee.

On Appeal From The United States District Court
For The Southern District Of Indiana

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR THE RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENT

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MOTION OF THE RAILWAY EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Rule 42 of this Court, the Railway Labor Executives' Association hereby moves the Court for leave to file the attached *amicus* brief in support of the Jurisdictional Statement filed herein by the Solicitor General.

Railway Labor Executives' Association is an association of all of the standard and international railway labor organizations, 21 in number, which collectively

represent all of the crafts and classes of all employees who work on the nation's Class I railroads. Among the functions for which the Railway Labor Executives' Association is responsible is that of representing the interests and concerns of all railroad employees in maintaining and preserving retirement benefits available to them, their spouses or survivors under the Railway Retirement Act. The members of the Railway Retirement Committee of the Railway Labor Executives' Association served as labor members of the Joint Labor-Management Railroad Retirement Negotiating Committee established pursuant to Section 107 of PL 93-69 in an effort to reach agreement on a legislative program to avert the then impending financial collapse of the Railroad Retirement system. In time, an agreement was reached resulting in the preparation of a draft bill, prepared at the direction of the Congress, which eventually was submitted to the respective chairmen of the Committees of the United States Congress having jurisdiction over the railroad retirement program.

The Railroad Retirement Act provides the basic pension for railroad employees. The ability of the program to meet its pension obligations as they become due is of overriding importance to railroad employees, most of whom spend their entire working lives in railroad employment. The railroad industry is unique in this respect. With minor exceptions affecting an insignificant percentage of railroad employees, there are no negotiated supplemental pension plans in the railroad industry. The Railroad Retirement Act supplies the basic and in most cases, the only retirement program for these employees.

The decision under review, if sustained, would upset a balance established by the Congress in the 1974 legislation restructuring the Railroad Retirement Act, which was designed to eliminate a financial drain of such magnitude on the resources of the railroad account that it threatened to undermine the entire system.

We submit this brief as a supplement to the Jurisdictional Statement to assist the Court in its understanding of the complex problems presented to the Congress in the shaping of the railroad retirement legislation under review, resulting, among other things, in the drawing of lines which the decision below would redesign.

The date of filing this motion for leave to file the attached *amicus* brief has been unduly delayed because of the need to confer with the client and because of the intervening holiday period.

For these reasons, we request the Court to permit the filing of the attached *amicus* brief.

Respectfully submitted,

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BRIEF FOR THE RAILWAY EXECUTIVES' ASSOCIATION AS AMICUS CURIAE

This amicus brief is submitted to the Court pursuant to Rule 42.

INTEREST OF AMICUS CURIAE

The motion for leave to file this *amicus* brief describes the deep interest of the Railway Labor Executives' Association, as the association of all railway labor unions representing all classes and crafts of railway employees, in any matter, including this case

which affects the basic pension system for railroad employees.

As pointed out in the motion, the Railroad Retirement Committee of the Railway Labor Executives' Association served as the labor members of the Joint Labor- Management Railroad Retirement Negotiating Committee and was intimately involved in the design of the legislative proposals to restore the financial integrity of the railroad pension system. As fully described in the Jurisdictional Statement and as supplemented by this *amicus* brief, the threat to the continuing existence of the Railroad Retirement program was so severe during the period of this legislation that radical restructuring was essential if the system were to survive. In the course of the consideration of this legislation, the windfall or dual benefit, defined in the Jurisdictional Statement and in this brief, was identified as the central cause for the then impending financial collapse of the program. It was thus apparent to the members of the Joint Committee established by the Congress and to the Congress that the Railroad Retirement system could no longer tolerate the continuance of this unique element. The result was the elimination of the dual benefit, but in so doing the Congress prescribed a savings clause covering a class of railroad employees, fully described in the Jurisdictional Statement, with respect to whom the Congress identified a federal obligation. Financing of this vestigal element carried over from the preceeding system was to be undertaken by the Federal Treasury. It was in this area that lines had to be drawn and were drawn based upon long standing and traditional considerations applied by the Congress throughout decades of Railroad Retirement legislation. Although there may have

been options with respect to the manner of drawing lines of this nature, the distinctions made by the Congress in defining the "grandfathered" class were hardly irrational.

This brief will consider these points in amplification of the Jurisdictional Statement.

STATEMENT OF THE CASE

In *Hisquierdo* v. *Hisquierdo,* 439 U.S. 572 (1979), Mr. Justice Blackmun characterized the Railroad Retirement Act of 1974, 88 Stat. 1305, 45 U.S.C. §§ 231-231t (1976 ed.), "[i]n its modern form," as comprising "both a private pension program and a social welfare program" providing two tiers of benefits reflecting this dichotomy. "The upper tier, [the Railroad Retirement or staff component] like a private pension, is tied to earnings and career service. . . . The lower, and larger, tier of benefits [the Social Security component] corresponds exactly to those an employee would expect to receive were he covered by the Social Security Act," 45 U.S.C. § 231b(a)(1). *Hisquierdo* at 574.

The Court further noted in *Hisquierdo* that "Like Social Security, and unlike most private pension plans, railroad retirement benefits are not contractual. Congress may alter, or even eliminate, them at any time. (at 575.) It should be stressed, however, that the Railroad Retirement system is a closed system, historically supported through Railroad Retirement taxes paid by employees and by the railroads. Similarly, the cost of administration of the Railroad Retirement Board are supported exclusively by the railroad industry through the payment of railroad taxes so earmarked.

This case involves the treatment by Congress in 1974 of those hybrid or unique benefits called dual benefits resulting from the interplay of the Railroad Retirement Act and the Social Security Act, 42 U.S.C. §§ 301 *et seq.*; that is, from the employment of an employee in railroad work and non-railroad work either concurrently or alternatively in his employment history. Prior to 1974, a railroad employee could acquire Social Security credits through daily or weekly employment at the end of his hours or days of railroad employment, (a practice which has sometimes been referred to as "moonlighting.") or an employee could have accumulated quarters of Social Security coverage through non-related employment prior to or subsequent to his railroad employment. In either case, sufficient guarantees of coverage in his non-railroad employment together with sufficient years of service in his railroad employment would have and did result in satisfying eligibility requirements under each of these systems.

In these cases, the Social Security benefit plus the Social Security equivalent within the Railroad Retirement benefit will always exceed the amount of a Social Security benefit which would have been paid if based on combined railroad and non-railroad earnings. Stated in terms of the Railroad Retirement Act of 1974, the Social Security component of the Railroad Retirement benefit (Tier I) based on railroad earnings plus the Social Security benefit based on non-railroad earnings, calculated separately, will exceed the amount of the benefit which would have been payable if both the railroad and non-railroad service had been combined in a single Social Security calculation.

The windfall or excess dual benefit which is the subject of this proceeding, is the difference between these

two sums, that is, the amount by which the sum of the separate Social Security benefits, one based on railroad service only and one based on Social Security service only, exceeds the single benefit based on the combined railroad and social security service.

This windfall benefit was a consequence of the incompleteness of the coordination of the two systems in 1951 and during the decades prior to the challanged 1974 legislation had the unfortunate effect of draining the railroad account of approximately $4 billion.

In 1974, it was established that the actuarial deficit of the Railroad Retirement system had escalated to $529 million each year or 9.05% of the 1974 payroll. 451 million of these dollars or 7.72% payment were directly attributable to the windfall benefit. It was recognized by the Joint Committee and by the Congress that a shortfall of this enormous dimension, if untreated, would destroy the railroad pension system within a short period of time. The Committees in each Branch of the Congress agreed "that resolution of the so-called "dual" benefit is central both to insuring the fiscal soundness of the Railroad Retirement system and in establishing equitable retirement benefits for all railroad employees." H. Rept. No. 93-1345, 93d Cong., 2d Sess. (1974) at 11; S. Rept. No. 93-1163, 93d Cong., 2d Sess. (1974) at 11 (hereinafter referred to as "Committee Reports" where the reports are substantially identical in substance or in pagination).

The Committee Reports recognized that "the most difficult problem in this regard involves the manner in which the dual benefit should be phased out on an equitable basis" and thereafter proceeded to define the

class "whose equities entitle them" to be included within the savings provision, Committee Reports at 11.

The Committee Reports explained that because the "deficit in the railroad retirement system has occurred" in consequence of Congressional action, improving Social Security benefits as well as action removing earlier restrictions on dual benefits, the bill, as reported, provided "that appropriations be made to cover the costs of phasing out dual benefits" as delineated by the savings provision; that is, that the cost of supporting the restricted dual benefit program, estimated on a level basis of $285 million through the year 2000 or $7 billion 1974 dollars, should be paid by the Federal Treasury and not by Railroad Retirement system which lacked the capacity to absorb this heavy burden. Committee Reports at 4 and 5.

It was on this precise point that President Ford rested his veto of the 1974 legislation. In his veto message of October 4, 1974, he stated that "This bill proposes to solve the financial problems of the Railroad Retirement system by placing a seven billion dollar burden on the general taxpayer, requiring him to contribute $285 million to the Railroad Retirement Trust Fund for the next 25 years." *Legislative History of the Retirement and the Railroad Unemployment Insurance Systems,* Railroad Retirement Board (1978) at page 470.

The House of Representatives overrode the veto by a vote of 360 to 12. The override vote in the Senate was 72 to 1. *Legislative History, Id.* at 472.

It was subsequently determined that the $285 million estimate of the cost of maintaining the phased out dual benefit within the limits of the savings provision

had been calculated on a static basis; that is, without allowance for inflation. Current recalculation on a level basis through the year 2000, adjusted for inflation, made by the Comptroller General of the United States establishes the dual benefit cost at $415 million per year over a 21 year period or approximately $8 billion. The redrawing of the line by the District Court would increase this figure by an amount of $119 million for each of the next 20 years or approximately a $2.4 billion increase overall. (JS 8, p. 15.)

Congress has yet to appropriate the full amount of this phase out cost as estimated by the Railroad Retirement Board pursuant to the provisions of the Act, a calculation which, in turn, is well below the Comptroller General's estimate.

THE DECISION BELOW

The Jurisdictional Statement clearly and succinctly analyzes the decision below. There is no warrant for further analysis on this point.

As pointed out by the Jurisdictional Statement, the District Court's decision turned on whether the lines drawn by the savings clause were reasonably related to the legislative purpose.

The District Court, in deciding that the delineation by the savings provision in Section 3(n) of the Railroad Retirement Act excluding the members of appellees' class from the grandfathered class had no reasonable relation to the purpose of the statute, (J.S. App. 30a) failed completely to perceive the nature and purpose of the restructured legislation as described in the Jurisdictional Statement and as highlighted by the *amicus* brief. Nothing could be clearer than the per-

ception by the Congress that the precipitous slide of the Railroad Retirement system into insolvency and eventual bankruptcy was due almost entirely to the growing weight of the dual benefit, resulting from the earlier amendments to the Social Security Act as well as the earlier repeal of the legislative restrictions on dual benefits.

As this Court noted in *Hisquierdo,* the obligation to pay dual benefits was and is not contractual but may be altered at any time, as it had been in the past, or even eliminated, as it was by the 1974 Act.

In abolishing dual benefits in 1974, the Committee of the Congress reported to their respective Bodies that "a windfall no longer will be possible except insofar as the bill preserves benefits for those beneficiaries or employees whose equities entitle them thereto." Committee Reports at 11. The Committee Reports then characterized the problem of structuring the grandfathered class "whose equities entitle them" to limited preservation as "most difficult." The reports thereupon proceeded to explain precisely how the lines were to be drawn.

It nowhere appeared that Congress was intent upon protecting "completely" the expectations of all persons, regardless of their attachment to the railroad industry, who were fully insured under Social Security and who had accumulated at some point in their working lives at least ten years of railroad service.

The contrary is the fact. The delineations and classifications were explicit and clear.

The problem of identifying financial resource other than Railroad Retirement for the support of the preserved dual benefit was obviously a most severe one,

witness the position of the Administration as reflected in President Ford's message on his veto of the bill, described above.

The delineation of the grandfathered class based upon attachment to the railroad industry so deliberately drawn by the Congress on the precedents and policies in other aspects of the Railroad Retirement Act throughout its legislative history is obviously rational and is intimately related to the legislative purpose to eliminate the financial drain which threatened the continued existence of the Railroad Retirement System. It was clear from the very beginning of the legislative deliberations that the dual benefit had to be abolished. The Congressional concern was over the extent and manner of the phase out, if indeed there was to be one. Because cost was an overriding factor and since it could not in any sense be borne by the Railroad Retirement Account, the problem was to find a new source for financing the dual benefits which were to be preserved for the "equitably entitled" during the phase out process.

In selecting the Federal Treasury as the new source, the Congress drew lines recognizing equitable entitlement in a way most compatible with the appropriation concerns which so deeply troubled the Administration.

CONCLUSION

We submit that the record in this respect is so clear and so convincing that the decision below should be summarily reversed.

Respectfully submitted,

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